

FEDERAL VICTIM RIGHTS CASE LAW SUMMARIES

(Last updated August 11, 2006)

CONFRONTATION CLAUSE

Davis v. Washington

No. 05–5224, 154 Wash. 2d 291, 111 P. 3d 844, affirmed; No. 05–5705, 829 N. E. 2d 444, reversed and remanded. (June 19, 2006)

For purposes of determining whether statements made were testimonial, and therefore subject to the requirements of the Confrontation Clause of the Sixth Amendment, the Court considered statements made in two cases: those made by a victim in response to questioning by a 911 operator, and those made in response to a questioning by a police officer responding to a reported domestic disturbance. The court set forth the following test:

Statements are nontestimonial when made in the course of public interrogation Under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

In reviewing the statements at issue, the Court concluded that the statements made in response to at least the initial interrogation by a 911 operator were not testimonial because, in part, those statements were made to resolve a present emergency. In contrast, the Court concluded that the elicited statements made in response to police questioning were testimonial. In reaching its conclusion, the Court reaffirmed that “one who obtains the absence of a witness by wrongdoing forfeits the Constitutional right to confrontation.”

MASSACHUSETTS VICTIM RIGHTS CASE LAW SUMMARIES

(Last updated August 11, 2006)

CRIMINAL HARRASSMENT

Commonwealth v. Walker
Supreme Judicial Court
July 23, 2004

Definition of “poison”

On three separate occasions, the defendant drugged four different women by placing sleeping medication (which contained the controlled substance temazepam) in their drinks. After being convicted of four counts of mingling poison with drink with intent to kill or injure, the defendant appealed, claiming that sleeping medication is not a “poison.”

The SJC held “[t]here is no doubt that temazepam, administered improperly, is capable of causing injury, thus acting as a poison.”

CRIMES AGAINST THE PERSON

Commonwealth v. Malden
Appeals Court
July 1, 2004

Threats

A defendant may be criminally responsible for making a threat even if it fails to reach the intended victim.

While in court on charges of violating a 209A order, the defendant looked over to the victim and said, “I will kick your ass and I will get you for this.” The victim was preoccupied and did not hear the threat, but a police officer heard the words and told the victim what the defendant said. The defendant was charged with making a threat. The defendant was found guilty and appealed.

In reviewing the case, the Appeals Court held that “there is no firm basis ... for concluding that [actual receipt by the victim] is a necessary element of the crime of making a threat.” What does matter is “whether the maker had any intention or reasonably should have expected that it would be passed on to the victim.”

CHAPTER 209A

Corrado v. Hedrick, Jr. ***NEW***

Definition of “Abuse”

The plaintiff successfully obtained an *ex parte* restraining order against her fiancé that directed the defendant, among other things, to leave and remain away from their

residence. At the hearing six weeks later, however, it became clear to the judge that the real dispute involved the parties' financial interests in the home they both owned and occupied. The judge found the defendant's version of events to be more credible and specifically ruled that the plaintiff failed to prove that "abuse" occurred to justify an extension of the order. Despite his own findings, the judge nevertheless continued to extend the *ex parte* order on multiple occasions. The judge, recognizing the vacate order was of "dubious legal validity," stated that the only reason for the extension was that he was "scared to death of these two people sitting in the same house ... [which] could lead to an explosive situation."

The appeals court affirmed the *ex parte* order (reasoning that the plaintiff's affidavits established a sufficient factual basis to conclude that the defendant had caused the plaintiff physical harm or placed her in fear of imminent serious physical harm), and vacated all subsequent orders against the defendant. Where the judge concluded the plaintiff had failed to prove "abuse," the judge lacked the power to impose a protective order based upon his subjective concern about what might occur. There must be more than "generalized apprehension [or] nervousness," which the courts refuse to recognize as abuse under c. 209A.

Commissioner of Probation v. Adams *NEW*

Appeals Court, March 10, 2006

Order Obtained Via Fraud

The plaintiff and the defendant were involved in a romantic relationship which ended when the defendant's violence and threats caused the victim to fear for her life. The plaintiff obtained an emergency abuse prevention order against the defendant. In retaliation, the defendant filed a perjurious complaint for a restraining order, and successfully obtained an order against the plaintiff. The plaintiff later filed a motion to vacate the defendant's order against her. In its decision to vacate the order, the Court found that the defendant's order was obtained through fraud because nineteen of the defendant's sworn allegations against the plaintiff were false. The court also granted the plaintiff's additional motion to expunge the record of a 209A order from the system. The Appeals Court disagreed and upheld the order of expungement. Before a court may invoke its inherent power to expunge a record, it must conduct a balancing test: the government's interest in maintaining the record versus the harm suffered. The court found the harm suffered by the plaintiff was obvious and substantial where the existence of the order would adversely affect: a) her employment; b) any future 209A proceedings; c) future bail proceedings; and d) her permanent court record. The court found there was no legitimate purpose in maintaining the records. If anything, the existence of the order would impede the fair administration of justice, since it would provide false information to law enforcement officials. When a fraud on the court has been shown, the judge has inherent power to take action in order to protect the integrity of the courts. "Expunging [the] record not only remedies any harm suffered by [plaintiff], but also sends the appropriate message to the public: [T]he courts will not be used as a vehicle for abusing G.L. 209A as a means of harassment through the seeking and obtaining of fraudulent 209A orders."

DISCOVERY

Commonwealth v. Santana Suffolk County, September 24, 2001

Victim's Address

A judge abused his discretion when he ordered a prosecutor to disclose the address of a victim in a case involving assault and battery, annoying phone calls, and threats. The defendant insisted she needed the address so she could interview the victim to obtain information to impeach her. A single justice of the SJC vacated the order and pointed out that the Commonwealth is not required to produce evidence that is not in its possession or control, and strongly underscored the judge's responsibility to limit discovery in cases such as this when safety is an issue.

Commonwealth v. Liang 434 Mass.App.Ct. 131 (2001)

Victim Witness Advocate's Notes

Victim/Witness Advocates are part of the Commonwealth's prosecution team. Therefore, any notes a Victim/Witness Advocate makes regarding a case will be treated exactly the way as the notes a prosecutor keeps in a case. Notes taken by an Advocate regarding contact and conversations with victims and witnesses are protected from discovery by the defense under the same "work product" doctrine that applies to prosecutors' notes in any given case. Likewise, relevant "statements" (as defined by the rules of criminal procedure) contained in the notes of a Victim/Witness Advocate must be disclosed to the defense. It is the responsibility of the Victim/Witness Advocate to relay to the prosecutor any statements, and it is the responsibility of the prosecutor to ask about and review the notes of the Advocate to ensure compliance with the statutory and ethical obligations relating to discovery.

EVIDENTIARY ISSUES

Commonwealth v. Adjutant Supreme Judicial Court March 14, 2005

Prior Acts of Violence

The defendant, employed by an escort service, stabbed and killed a client when he demanded more services than he paid for. The defendant maintained at trial that all of her actions were defensive in that the victim had come after her with a crow bar. The defendant was convicted of voluntary manslaughter and appealed, claiming that "evidence of the victim's reputation and past conduct, even though unknown to her at the time of the killing, should have been admitted at trial" because it was relevant to her claim that the victim was the "first aggressor" and that she acted in self-defense. Trial judges now have the discretion to admit evidence of specific incidents of violence that a victim is reasonably alleged to have initiated – but only in cases where the defendant is claiming self-defense and the issue of who the first aggressor was is in dispute.

Commonwealth v. Bianchi
435 Mass. 316 (2001)

Prior Bad Act As Evidence

Evidence of prior assault admissible. The SJC found no error in allowing testimony regarding the defendant's vicious assault against the victim just nineteen days before he murdered her (relevant to show the hostile nature of the relationship, the defendant's state of mind and motive to kill the victim). Testimony concerning the victim's demeanor and injuries after the prior assault were also admissible, as well as photos of her injuries.

SENTENCING

Restitution

Commonwealth v. Williams
57 Mass.App.Ct. 917 (2003)

In order to obtain restitution, a victim is *not* required to submit an insurance claim to cover losses incurred by the defendant's conduct. After being convicted of breaking glass in a building and larceny of a motor vehicle, the defendant was ordered to pay restitution to the victim. On appeal, the defendant complained about the amount of restitution, stating in part that the victim should have been required to offset his losses by placing a claim with his insurance company for the damages incurred. The Appeals Court disagreed, stating, "there is no requirement that a victim must submit a claim under any insurance policy that might cover the loss before an order of restitution can be made."

SEXUAL ASSAULT

Commonwealth v. McCourt
438 Mass.App.Ct. 486

Aggravated Rape

In the case, the defendant first raped the victim, struck her in the head, knocked her to the ground, choked her, kicked her in the face, and punched her in the back. However, since the violent strikes and attacks occurred after the rape, the Appeals Court held that the defendant could not be found guilty of aggravated rape. In reversing the decision, the SJC stated that the statute "is sufficiently broad to encompass a rape that precedes a brutal beating that inflicts serious bodily injury on the victim, so long as the rape and the beating 'constitutes one continuous episode and course of conduct.'" The Court noted that the "critical point is not whether the aggravated acts served to compel a victim's submission, but whether the rape victim sustained serious bodily injuries, or was subjected to other felonious conduct, during the same episode."

Commonwealth v. Sa
58 Mass.App.Ct. 420 (2003)

Rape Shield Statute

The defendant was charged with aggravated rape. His defense was that the victim was a prostitute who had falsely accused him of rape because he was unable to pay her the agreed upon price after they had engaged in consensual intercourse. The victim had a prior conviction as a common nightwalker. The Commonwealth filed a motion based on a rape-shield statute, seeking to exclude the victim's "sexual history," including her prior

conviction for prostitution. The defendant argued that notwithstanding the rape shield's prohibition against admitting evidence of a sexual assault victim's "sexual conduct," a judge should have the discretion to admit evidence of a complaining witness' conviction of a prior sexual offense for impeachment purposes. Under the court's ruling, "neither the facts surrounding their sexual conduct nor their reputation in such matters is admissible, and, even if a complainant's prior conviction of prostitution satisfies all the technical prerequisites of section 21, the judge must consider the policies to be promoted by the rape-shield statute and may exclude the conviction due to those policy concerns.

SPONTANEOUS UTTERANCE

Commonwealth v. Dunn
56 Mass.App.Ct. 89 (2002)

Admissibility

Statements of a domestic violence victim do not qualify as spontaneous utterances if made during the execution of a preconceived plan to have the defendant arrested. The defendant punched the victim in the face multiple times, badly bruising her right eye. The victim made a safety plan and left the house the next day. When police arrived, she made statements to them which were later admitted into court as spontaneous utterances. While acknowledging that the victim was undoubtedly distraught, the Appeals Court found that the victim's statements were made "as part of a preconceived plan ... to make a safe exit from the defendant's control; a plan that included having him arrested." Because the victim's statements were part of a preconceived plan, the court ruled that it was not a "spontaneous reaction to the event itself."

Commonwealth v. Davis
54 Mass.App.Ct. 756 (2002)

Admissibility

A victim's own testimony that she had calmed down by the time she spoke with police does not disqualify her statements as spontaneous utterances. A victim's self-assessment is not the final word in making the evidentiary ruling. During trial in a rape case, the Commonwealth called several witnesses, including two police officers, to testify regarding statements made by the victim. The witnesses' description of the victim's demeanor were similar in that she was crying, screaming and hysterical to the extent that she had a hard time catching her breath. All of the victim's statements were admitted without objection as spontaneous utterances. The victim then took the stand. On cross examination, when asked whether she had the ability to reflect upon what had happened by the time the officers arrived, she responded "yes." Based on the victim's response, defense argued that statements made by the victim after the police arrived did not qualify as spontaneous utterances. Taking into consideration the victim's demeanor as described by the previous witnesses, the court ruled that the victim's response on cross exam did not foreclose the finding "that she was still under the sway of the traumatic event."

VICTIMS

Commonwealth v. Carter 54 Mass.App.Ct. 629 (2002)

Admissibility

A victim need not be visibly upset, distraught, or hysterical when statements are made in order for them to be admissible as spontaneous utterances.

The sole evidence against the defendant, who was charged with assault and battery and threats to commit a crime, was the testimony of a police officer. In recounting the incident, the officer described the victim as “very guarded, nervous ... she kept looking at her son [the defendant] ...” Because the victim did not have an outward display of emotion, but, rather, a “controlled and guarded” demeanor, the defense claimed that the “exciting event had ‘lost its sway.’” While acknowledging that the question was close, the court found that the victim was “still under the influence of the frightening behavior of her son.” In viewing all of the evidence, the court clearly took into consideration the substance of the victim’s statements, e.g., that her son had physically grabbed her, ordered her to hand over money and a bank card, threatened to destroy her room, and, in the victim’s view, only was interested in obtaining the money for drugs.

Commonwealth v. Hagen 437 Mass. 374 (2002)

Standing

The Victim Bill of Rights (M.G.L. Ch. 258B) does not create “standing” for a victim to challenge the denial of a statutory right to a “prompt disposition.”

In 1987, the defendant was convicted of rape and indecent assault and battery. The following year he was sentenced to 10 years in state prison. The defendant filed an appeal and a motion to stay execution pending appeal. The stay was granted and the case languished for thirteen years, due to various problems assembling the official appellate record. In 2001, the victim engaged private counsel to file a motion with the trial court requesting that the stay be revoked. The trial judge would not permit the attorney to file an appearance for the victim, ruling that the victim was not a party to the criminal proceeding. The trial judge did, however, allow the attorney to address the court “in connection with the victim’s thoughts.”

The Victim Bill of Rights does not confer on any victim any rights separate and distinct from those “lodged” in the Commonwealth. Although the statute was intended to allow victims to actively participate in the criminal justice process, it does not create a private right to file motions in criminal cases.

The statutory requirement of a “prompt disposition” was satisfied in this case because the statute defines “disposition” as “the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime.” In this case, the defendant had been tried, convicted and sentenced within one year of indictment. The victim’s recourse at this stage is to request assistance from the Victim and Witness Assistance Board or from the District Attorney or Attorney General’s Office. Even if the prolonged delay had occurred prior to sentencing, the Victim Bill of Rights still does not confer on the victim a right to be heard as a party to the case.

WITNESSES

Commonwealth v. Giacobbe 56 Mass.App.Ct. 144 (2002)

Child Witness

Allowing the Victim/Witness Advocate to be present when defense counsel interviewed the Commonwealth's child witness was reasonable and did not create a substantial risk of miscarriage of justice.

The defendant was on trial for beating and sexually assaulting his ex-wife. Four days prior to trial, the Commonwealth notified defense counsel of its intention to call the couple's 9 and 10 year old sons to testify. At trial, the judge allowed defense counsel's motion in limine to interview the children, but allowed the Victim/Witness advocate to be present during the interview, stating that the "Advocate, the witness and defense counsel alone will be the only people present." The judge denied defense counsel's request that the Advocate be ordered not to discuss the interview with others.

On appeal, the defendant claimed that both the prosecutor and the trial judge hindered defense access to children; specifically, that the defendant was entitled to have a disinterested third person (as opposed to the Victim/Witness Advocate) present at the interviews. In reviewing the ruling by the trial judge, the Appeals Court found that the conditions imposed by the trial judge did not create a substantial risk of a miscarriage of justice. "[W]hile designation of a neutral third party has a certain appeal, aside from the defendant's failure to request such a person, the judge reasonably could have believed that the Victim/Witness Advocate was familiar with the case and that she could help the children understand and tolerate the required court procedures."

CRIMES AGAINST GOOD ORDER

Commonwealth v. Rahim 441 Mass.273 (2004)

Incest

In this case, the defendant raped his stepdaughter. The numerous charges included six counts of incest. The defendant moved to dismiss the charges of incest because, he claimed, incest laws did not apply to the case since he was neither related to his stepdaughter by blood or adoption. The court ruled in favor of the defendant.

CRIMES AGAINST THE PERSON / PUBLIC JUSTICE

Commonwealth v. Chambers 57 Mass.App.Ct. 47 (2003)

Assault

The victim of a threatened battery does not need to be aware of the threatening act. The defendant was convicted of ramming his car into another car containing his ex-girlfriend and three others. While the victims were unaware of the impending harm, the court found the evidence in this case sufficient to sustain a conviction on the threatened battery theory of assault.

Commonwealth v. Paton

Appeals Court
March 31, 2005

Criminal Harassment

The defendant visited the victim twice at the local club where she worked as a waitress. The victim also noticed the defendant while she was shopping, driving and exercising. The defendant was found guilty of criminal harassment. The defendant appealed, claiming his conduct was not willful and malicious.

The court ruled that his conduct was, indeed, willful and malicious, that evidence “indicate[d] that he had to acquire specific knowledge of the victim’s whereabouts, and that he intended to continue the pattern of appearing to the victim.” His conduct was malicious because “... unexpectedly appearing in proximity to her in other places has an ominous, menacing, and even sinister quality which caused the victim anxiety and apprehension,” all criteria which satisfy upholding the criminal harassment statute.